

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

| | | |
|---|---|------------------|
| CARL N. MOSLEY, HARRY |) | |
| PATTERSON, LEONARD POTENSKY, |) | |
| JAMAL GARRISON, MICHELLE |) | |
| GARRISON, JOHN MITCHELL, AND |) | |
| RONALD PRESTON, on behalf of |) | |
| themselves and all others similarly situated, |) | Civil Action No. |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | |
| VELOCITY EXPRESS CORPORATION, |) | |
| VELOCITY EXPRESS LEASING, INC., |) | |
| VELOCITY EXPRESS, INC., and all other |) | |
| subsidiaries or successors, |) | |
| |) | |
| Defendants. |) | |
| |) | |

NOTICE OF REMOVAL

Defendants Velocity Express Corporation, Velocity Express Leasing, Inc. and Velocity Express, Inc., by and through its undersigned counsel, hereby gives notice, pursuant to 28 U.S.C. §§ 1441 and 1446, of the removal of the above-captioned action from the Court of Common Pleas of Allegheny County, Pennsylvania to the United States District Court for the Western District of Pennsylvania. In support of this Notice, Defendants state as follows:

I. BACKGROUND

1. On or about July 10, 2009, Plaintiffs filed a class action Complaint against Defendants in the Court of Common Pleas of Allegheny County, Pennsylvania, at Civil Action No. GD-09-012588. A true and correct copy of the Complaint is attached hereto as Exhibit 1.¹

¹ Pursuant to LR 5.1.1(D) of the Local Civil Rules for the Western District of Pennsylvania, personal data identifiers have been redacted from the Complaint originally filed in the Court of Common Pleas of Allegheny County.

2. In the Complaint, Plaintiffs purport to represent a class defined as “[a]ll individuals who work or have worked as pick-up and delivery drivers for Velocity in the Commonwealth of Pennsylvania at any time within three years of date of the filing of this action.” (Exhibit 1, Compl. ¶ 41).

3. As set out more fully below, this case is properly removed to this Court pursuant to 28 U.S.C. § 1441, because Defendants have satisfied the procedural requirements for removal and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331.

II. DEFENDANTS HAVE SATISFIED THE PROCEDURAL REQUIREMENTS FOR REMOVAL PURSUANT TO 28 U.S.C. § 1441

4. Upon information and belief, the Complaint was served on Defendants on or about July 20, 2009. Accordingly, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b).

5. The Court of Common Pleas of Allegheny County, Pennsylvania is located within the federal Western District of Pennsylvania. Therefore, venue is proper pursuant to 28 U.S.C. § 118(a) because it is the “district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

6. No previous application has been made for the relief requested herein.

7. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served upon counsel for Plaintiff and a copy is being filed with the Clerk of the Court of Common Pleas of Allegheny County, Pennsylvania.

III. REMOVAL IS PROPER BECAUSE THIS COURT HAS SUBJECT MATTER JURISDICTION PURSUANT TO 28 U.S.C. § 1331

8. There is federal jurisdiction over this removed action pursuant to 28 U.S.C. § 1441 because this action could originally have been filed in this Court pursuant to 28 U.S.C. § 1331 (federal question jurisdiction).

9. Plaintiffs' Complaint includes allegations that Defendants violated the Fair Labor Standards Act ("FLSA") and the Employee Retirement Income Security Act ("ERISA"), over which this Court has exclusive jurisdiction. (Exhibit 1, Compl. Counts 1, 2 and 5). Accordingly, federal question subject-matter jurisdiction exists.

WHEREFORE, Defendants respectfully request that the instant action, currently pending in the Court of Common Pleas of Allegheny County, Pennsylvania at GD-09-012588, be removed to this Court; that this Court accept jurisdiction; and that this action be henceforth placed on the docket of this Court for all further proceedings as though the same action had been originally instituted and commenced in this Court.

Respectfully submitted,

/s/ Shannon H. Paliotta

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Dated: July 27, 2009

Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **Notice of Removal** was served this 27th day of July, 2009, via first-class U.S. Mail upon the following counsel of record:

Edward J. Feinstein, Esq.
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and

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/s/ Shannon H. Paliotta

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